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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS17-07]

Collection and Transmission of Annual AMC Registry Fees

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).

ACTION: Final rule.

SUMMARY: The ASC is adopting a final rule to implement collection and transmission of appraisal management company (AMC) annual registry fees in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to be applied by State appraiser certifying and licensing agencies that elect to register and supervise AMCs, pursuant to 12 U.S.C. 3353 and the regulations promulgated thereunder.

DATES: Effective date. This final rule will become effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

Section 1473 of the Dodd-Frank Act¹ included amendments to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989² (Title XI). Section 1109 of Title XI,³ *Roster of State certified or licensed appraisers; authority to collect and transmit fees*, was amended by the Dodd-Frank Act to require States⁴ that elect to register and supervise AMCs to collect: (1) from AMCs that have been in existence for more than a year an annual registry fee of \$25 multiplied by the number of appraisers working for or contracting with such AMC in such State during the previous year; and (2) from AMCs that have not been in existence for more than a year, \$25 multiplied by an appropriate number to be determined by the ASC. Such \$25 amount may be adjusted, up to a maximum of \$50, at the discretion of the ASC, if necessary to carry out the ASC's Title XI functions.⁵

Section 1117 of Title XI,⁶ *Establishment of State appraiser certifying and licensing agencies*, was amended by the Dodd-Frank Act to include additional duties for States, if they so choose, to: (1) register and supervise AMCs; and (2) add information about AMCs in their State to the

¹ Pub. L. 111-203, 124 Stat. 1376.

² Pub. L. 101-73, 103 Stat. 183.

³ 12 U.S.C. 3338.

⁴ As of January, 2017, the 50 States, the District of Columbia, and four Territories, which are the Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, and United States Virgin Islands, had State appraiser certifying and licensing agencies.

⁵ See 12 U.S.C. 3338(a)(4)(B).

⁶ 12 U.S.C. 3346.

National Registry of AMCs (AMC Registry).⁷ States electing to register and supervise AMCs under Section 1117 must implement minimum requirements in accordance with the AMC Rule.⁸

Section 1103 of Title XI,⁹ *Functions of Appraisal Subcommittee*, was amended by the Dodd-Frank Act to require the ASC to maintain the AMC Registry of those AMCs that are either: (1) registered with and subject to supervision by a State that has elected to register and supervise AMCs; or (2) are operating subsidiaries of a Federally regulated financial institution (Federally regulated AMCs). On or before the effective date of this rule, the ASC will issue an ASC Bulletin to States that will address:

1. When the AMC Registry will be open for States; and
2. Reporting requirements (information required to be submitted by States in order to register AMCs on the AMC Registry) with the effective date for compliance.

Title XI as amended by the Dodd-Frank Act imposes a statutory restriction on performance of services by AMCs for a federally related transaction (FRT)¹⁰ that applies after a 36-month period that began when the AMC Rule became effective (Implementation Period).¹¹ The ASC

⁷ Title XI as amended by the Dodd-Frank Act defines “appraisal management company” to mean, in part, an external third party that oversees a network or panel of more than 15 appraisers, who are State certified or licensed in a State, or 25 or more appraisers nationally (two or more States) within a given year. (*See* 12 U.S.C. 3350(11)). Title XI as amended by the Dodd-Frank Act also allows States to adopt requirements in addition to those in the AMC Rule. (*See* 12 U.S.C. 3353(b)). For example, States may decide to supervise entities that provide appraisal management services, but do not meet the size thresholds of the Title XI definition of AMC. If a State has a more expansive regulatory framework that covers entities that provide appraisal management services but do not meet the Title XI definition of AMC, the State should only submit information regarding AMCs meeting the Title XI definition to the AMC Registry.

⁸ The Dodd-Frank Act added section 1124 to Title XI, *Appraisal Management Company Minimum Requirements*, which required the Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Bureau of Consumer Financial Protection (Bureau); and Federal Housing Finance Agency (FHFA) to establish, by rule, minimum requirements for the registration and supervision of AMCs by States that elect to register and supervise AMCs pursuant to Title XI and the rules promulgated thereunder. The Agencies issued a final rule (AMC Rule) with an effective date of August 10, 2015. (80 FR 32658, June 9, 2015).

⁹ 12 U.S.C. 3332.

¹⁰ A federally related transaction includes any real estate-related financial transaction which: (a) a Federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser. *See* Title XI sec. 1121 (4), 12 U.S.C. 3350, implemented by the OCC: 12 CFR 34.42(f) and 34.43(a); Board: 12

recognizes that States electing to register and supervise AMCs may need to amend their rules and/or regulations, or revise their operating procedures in order to implement AMC registry fees. Given the limited period of time between publication of this final rule and the expiration of the Implementation Period, States may not be able to implement the AMC registry fees within the Implementation Period. As discussed further below in the subsection *Collection and transmission of annual AMC registry fees*, only those AMCs whose registry fees have been transmitted to the ASC are eligible to be on the AMC Registry. While the ASC encourages States that elect to register and supervise AMCs to begin collecting fees from registered AMCs as soon as possible in accordance with the requirements of Section 1109 of Title XI so that those AMCs may be entered on the AMC Registry, the restriction on performance of services for FRTs will not impact an AMC so long as the AMC is registered with a State that has elected to register and supervise AMCs, or is subject to oversight by a Federal financial institutions regulatory agency.

On May 20, 2016, the ASC published a proposed rule with a 60-day public comment period on implementation of the annual AMC registry fee that States would collect and transmit to the ASC if they elect to register and supervise AMCs.¹² This final rule sets the fee formula that States would apply in collecting annual AMC registry fees and transmitting those fees to the ASC.

II. The Final Rule

CFR 225.62(f) and 225.63(a); FDIC: 12 CFR 323.2(f) and 323.3(a); and NCUA: 12 CFR 722.2(f) and 722.3(a). Based on 2014 Home Mortgage Disclosure Act (HMDA) data, at least 90 percent of residential mortgage loan originations are not subject to the Title XI appraisal regulations. (FFIEC report to Congress, *Economic Growth and Regulatory Paperwork Reduction Act*, 82 FR 15900 (March 30, 2017).

¹¹ See 12 U.S.C. 3353(f)(1). In summary, beginning 36 months from the effective date of the AMC Rule, an AMC, as defined by Title XI, may not provide services for FRTs in a State unless the AMC is registered with the State pursuant to a registration and supervision program established under Section 1117, or is subject to oversight by a Federal financial institutions regulatory agency.

¹² 81 FR 31868 (May 20, 2016).

The final rule: (1) establishes the annual AMC registry fee in section 1109 of Title XI for AMCs in those States electing to register and supervise AMCs; and (2) implements collection and transmission of AMC registry fees as required by section 1109. The final rule sets forth the ASC's interpretation of the phrase "working for or contracting with" for purposes of calculating the annual AMC registry fee.

For the reasons discussed in section III of this SUPPLEMENTARY INFORMATION, the final rule adopts the rule substantially as proposed. The final rule contains technical, nonsubstantive changes.

III. The Final Rule and Public Comments on the Proposed Rule

The following is a section-by-section review of the proposed rule and a discussion of the public comments received by the ASC concerning the proposal. The ASC received 104 comment letters in response to the published proposal. These comment letters were received from State appraiser certifying and licensing agencies, AMCs, appraiser and real estate trade associations, professional associations, appraisal firms and appraisers.

A. Section 1102.401. Definitions

The ASC requested comment on all aspects of the proposed rule. The following is a discussion of the definitions, related public comments and issues relating to those definitions. Definitions on which the ASC did not receive comment are not discussed below and are adopted without change in the final rule.

The ASC is adopting the definitions substantially as proposed, including cross-references to the definitions established in the AMC Rule. Several commenters requested that the cross-referenced definitions be included in the final rule rather than as proposed by cross reference to definitions in the AMC Rule. However, if the ASC were to adopt the approach suggested by

these commenters, in the event those AMC Rule definitions are amended by the interagency process in the future, definitions included in this rule would become inaccurate and inconsistent. To avoid that circumstance, the ASC is adopting the definitions as proposed with cross-reference to those definitions established by the AMC Rule.

One commenter expressed concern over the definition of "appraiser panel" stating AMCs should not be penalized over other providers of appraisal services, and included discussion on appraisal firms and AMCs. This commenter quoted language from the AMC Rule on appraisal firms. Another commenter expressed concern that the definition of "appraiser panel" should only include independent contractors and not employees. The issues raised by these commenters were determined in the interagency AMC Rule during that rulemaking process.

Proposed § 1102.401(d) defined *performance of an appraisal*. Proposed § 1102.401(d) is being corrected to define *performed an appraisal*, which conforms to the actual phrase used throughout the rule, to mean the appraisal service requested of an appraiser by the AMC was provided to the AMC. The ASC is adopting this definition without substantive change as § 1102.401(d) in the final rule. One commenter questioned whether this referred to initial submission of the report or when the appraisal has been reviewed and accepted by the client in its final form. The ASC recognizes that the issue may be complicated by the ongoing debate within the profession concerning when an appraisal is complete. The ASC is adopting the definition as proposed, intending for the terms to remain subject to a plain English interpretation. Another commenter requested a definition of "appraisal service" be included in the final rule. The ASC recognizes that various appraisal services could be requested, including an appraisal review, and therefore declines to define the phrase, recognizing that States can be more restrictive. In general, commenters supported the proposed definition.

Establishing the Annual AMC Registry Fee.

The ASC is adopting proposed § 1102.402 without change. Section 1102.402 establishes the annual AMC registry fee for States that elect to register and supervise AMCs as follows:

(1) in the case of an AMC that has been in existence for more than a year, \$25 multiplied by the number of appraisers who have performed an appraisal for the AMC on a covered transaction in such State during the previous year; and (2) in the case of an AMC that has not been in existence for more than a year, \$25 multiplied by the number of appraisers who have performed an appraisal for the AMC on a covered transaction in such State since the AMC commenced doing business.

For AMCs that have been in existence for more than a year, section 1109 of Title XI provides that the annual AMC registry fee is based on the number of appraisers “working for or contracting with” an AMC in a State during a 12-month period multiplied by \$25, but where such \$25 amount may be adjusted up to a maximum of \$50.¹³ The final rule adopts the minimum fee of \$25 as set by statute and interprets the phrase “working for or contracting with” to mean those appraisers on an AMC appraiser panel that performed an appraisal for the AMC on a covered transaction during the previous year in a particular State.

For AMCs that have not been in existence for more than a year, the statute requires a determination by the ASC of an appropriate multiplier to calculate registry fees for those AMCs. The ASC proposed to use the same factors of \$25 multiplied by the number of appraisers that performed an appraisal for the AMC on a covered transaction, but the fee would be based on the actual period of time since the AMC commenced doing business rather than 12 months. For example, if an AMC has been operating for 6 months, the fee would be calculated by multiplying

¹³ See Title XI sec. 1109(a)(4)(B), 12 U.S.C. 3338(a)(4)(B).

\$25 by the number of appraisers that performed an appraisal for the AMC on a covered transaction during that 6-month period.

One commenter stated the ASC should identify what it will do with revenue from AMC registry fees and suggested the ASC should consider decreasing the fee to less than \$25 which would still allow the ASC plenty of funds to perform its Title XI-related functions. The commenter asserted the ASC has discretion to do so. However, section 1109(a)(4), by its plain terms, sets the minimum fee allowed under the statutory framework at \$25. The statute did provide latitude for the ASC to establish an appropriate number to multiply by \$25 for AMCs that have not been in existence for more than a year. Using the actual period of time since the AMC commenced doing business will maintain some consistency in the calculation of AMC registry fees to reduce administrative burden for the States. Based on the ASC's anticipated costs of overseeing States that elect to register and supervise AMCs, as well as the ASC's anticipated costs of maintaining the AMC Registry, the ASC believes the proposed annual AMC registry fee would cover those costs while supporting other Title XI functions of the ASC as mandated by Congress, and in particular, further development of its grant programs, particularly to support States as funds are available.

The ASC considered three options with respect to interpreting the phrase "working for or contracting with." Under the first option, the phrase "working for or contracting with" would have been interpreted to include every appraiser on an AMC appraiser panel during the reporting period¹⁴ in a particular State. The multiplier in this option would have included all appraisers on an AMC's appraiser panel in a particular State, including appraisers accepted by the AMC for

¹⁴ In the case of AMCs that have been in existence for more than a year, the reporting period would be 12 months. In the case of an AMC that has not been in existence for more than a year, the reporting period would be since the AMC commenced doing business.

consideration for future appraisal assignments. One commenter stated this option would likely penalize AMCs for adding appraisers to their roster for future use, and would also be burdensome for States. Another commenter stated the interpretation under the first option would be the easiest for States. The ASC remains concerned that this option would impose the most burden to AMCs and impose the highest registry fees.

Under the second option, the phrase “working for or contracting with” would have been interpreted to include those appraisers engaged by the AMC to perform an appraisal on a covered transaction during the reporting period in a particular State. Under this option, those appraisers engaged by the AMC to perform an appraisal, regardless of whether the appraiser completed the appraisal during the reporting period, would be included in the calculation of the AMC’s registry fees.

The ASC requested comment on the second option’s interpretation of the phrase “working for or contracting with” and whether this would be an easier interpretation for the States to administer. (*See Question 3 in the proposal.*) Several commenters expressed concern over this option. One commenter stated that AMCs could reduce their panel sizes, thereby creating slower turnaround times and utilizing fewer appraisers. Another commenter stated the interpretation under the second option would not be easier to implement and States would have to rely on AMCs self reporting this information. Another commenter expressed concern that the second option could penalize AMCs if an order is accepted and assigned but later cancelled and neither the AMC or the appraiser receive any compensation, and could also be burdensome for States to enforce without having a status of assignments and their completion during a given timeframe.

Under the third option, which is adopted in the final rule, the phrase “working for or contracting with” includes those appraisers that performed an appraisal for the AMC on a

covered transaction during the reporting period in a particular State. This option excludes appraisers accepted by the AMC for consideration for future appraisal assignments as well as appraisers who performed appraisals in the past, but did not perform any appraisals in the reporting period. The AMC registry fee is not intended to result in an appraiser being counted twice in calculating the fee, regardless of how many appraisals that appraiser performed in a single State during a reporting period. A few commenters misunderstood the proposed application of the fee and thought the fee would be calculated based on the total number of individual appraisers on an AMC panel, or that the fee would be imposed based on individual appraisals, neither of which is consistent with the proposal or the final rule.

Several commenters expressed support for the third option as having the least economic impact to an AMC, the least burden for appraisers and preferable from a State administrative point of view. A few commenters expressed support for the third option but believed it would be a burden for States to collect information from AMCs. One commenter, while stating the third option is costly to AMCs, stated that the third option would be the most equitable as it applies to those appraisers who had completed appraisal assignments, and that the first two options may cause AMCs to pare their appraiser panels. One commenter stated the third option would also simplify the queries that States would need to run to report all registered AMCs that have completed appraisal reports during a specific year or timeframe. Another commenter stated AMCs may use fewer appraisers for appraisal assignments to keep AMC registry fees down. The ASC anticipates there may well be such responses by AMCs to reduce their registry fees, but under the statutory framework, it is seemingly unavoidable.

The ASC requested comment on the ASC's interpretation of the phrase "working for or contracting with." (See Question 2 in the proposal.) One commenter expressed concern that for

AMCs in business less than 12 months, determining how many appraisals have been performed could be difficult. Another commenter suggested "working for" and "contracting with" should be properly defined with specifics and parameters. One commenter requested clarification of the term "working for," and another commenter, while supporting the third option, commented the term "performed" needs clarity, suggesting appraisals could be considered "performed" when delivered by the AMC to the client. The ASC recognizes that because the AMC is acting as an agent of the appraiser's client, delivery of an appraisal to the AMC could also be deemed delivery to the client. The ASC is adopting the interpretation as proposed, intending for the terms to remain subject to a plain English interpretation.

The ASC also requested comment on what aspects of the proposed rule, if any, would be challenging for States to implement and any alternative approaches that would make implementation easier, while maintaining consistency with the statute. (*See Question 8 in the proposal.*) Several commenters expressed concern that the proposed rule would create significant administrative burden on the State to calculate and verify registry fees, and would also result in expenditures to administer and transmit the registry fees. Some commenters are opposed to the fee in general, while a few expressed opposition to AMCs. A few commenters suggested no action should be taken until the Dodd-Frank Act is amended. One commenter stated the ASC should seek legislative changes to 12 U.S.C. 3338 asserting it is fundamentally flawed, and requested withdrawal of the proposed rule until the federal statute is changed. The ASC, however, is charged with implementation of the statute as passed by Congress.

One commenter stated that the 500 hours of regulatory burden is understated, and added States should be reimbursed for expenses in collecting and transmitting registry fees. Another commenter also stated that the 500 hours is underestimated stating the ASC failed to consider

administrative costs and expenses for creating and maintaining a database, and for the staff time to run the program. The ASC is working to minimize such burden in simplifying the reporting requirements for AMCs. As stated in the proposal, the ASC will issue a Bulletin to address reporting requirements with the effective date for compliance.

Another commenter foresees several barriers to collecting reliable data on how many appraisers are on an AMC panel and how many have done work for the AMC in the previous 12 months, including the necessity to adopt new rules, create new forms and update current IT systems to collect and maintain this data, all of which will result in increased labor costs for staff needed for implementation of the proposed rule. As stated in the proposed rule, the ASC anticipates further development of its grants program, particularly in support of the States as funds are available. The statutory purpose of ASC grants to the States is to provide funds to assist States in compliance with Title XI. Therefore, as funds are available, the ASC could consider establishing a grant to assist States in registry reporting requirements and transmission of registry fees for both appraisers and AMCs. Another commenter suggested the ASC should provide a revenue projection as well as costs to develop the AMC Registry. The ASC has included those expenses in its budget process and will continue to do so on an annual basis.

Another commenter opposed the interpretation of "working for or contracting with," stating it will create an entirely new regulatory criterion for States to implement and validate, thereby requiring audits. It should be noted that there is no federal requirement for States to audit AMCs to determine validity of information submitted to the State. A State may determine to periodically audit, or not to exercise such authority at all, or alternatively, a State may rely on the complaint/investigation process to determine if and when an audit is warranted.

By far the majority of comments received expressed concern over these additional fees and the impact on appraisers if the fee is passed on to them by the AMCs. More specifically, these commenters requested that the final rule prohibit AMCs from passing the fee on to appraisers. While the ASC shares in the concern expressed over the fee being passed on to appraisers, such regulation of AMCs is outside of the authority of the ASC. The ASC notes the fee imposed by statute is not a fee assessed on appraisers, but rather on AMCs. Some commenters identified certain States are already attempting to regulate this at the State level. One commenter, however, stated the choice to pass the fee on to the appraiser should be left to the AMC, and that appraisers have a choice whether to participate on an AMC panel.

Some commenters expressed concern that AMCs hide their appraisal management fees from borrowers by including them as part of the fee paid to appraisers, and requested that the final rule require fees be disclosed to the borrower. This, however, is outside the authority of the ASC. Comments were also received expressing concern over AMCs not paying customary and reasonable fees to appraisers, or charging appraisers various fees to be on an AMC panel. This too is outside the authority of the ASC.

One commenter suggested consideration of a de minimis exception, stating the ASC should allow AMCs to use the IRS 1099 threshold and thus exclude those appraisers to whom it pays less than \$600 during a tax year, which would include appraisers who performed only one appraisal assignment, and perhaps up to three. The commenter suggests its proposal as an alternative to potentially reduce AMC registry fees. However, the ASC would not have authority under the statute to provide such an exception, particularly in the case of AMCs that have been in existence for more than a year. Furthermore, the ASC is concerned there would be undesirable consequences. For example, there could be a reduction in appraiser fees in order to avoid the

proposed threshold. Additionally, AMCs might select appraisers in a manner to avoid the threshold rather than basing a selection on competency. The ASC will continue to work with States to address increased burden and will continue to explore means to provide additional grant funding to the States to support State programs as funds are available and additional grant policies and procedures are developed and approved.

A few commenters expressed preference for a flat fee to avoid any need to verify that AMCs are sending in the correct amount, another commenter suggested a two-tiered system and another commenter suggested a tiered structure based on the size of the appraiser panel and/or the volume of appraisals brokered by an AMC. The ASC considered these various options to calculating the AMC registry fee, but concluded that such options were not supported by the statute. Also, the ASC notes, in response to several commenters expressing concern over the honor system versus auditing AMCs on information provided to the State by AMCs, that it is up to the State to determine whatever process the State deems appropriate.

Two commenters stated the AMC registry fee should be calculated based on FRTs, not covered transactions. The ASC believes the proposal is consistent with the AMC Rule and the statute. The AMC Rule defined a covered transaction as any consumer credit transaction secured by the consumer's principal dwelling.¹⁵ As stated in the AMC Rule preamble, the definition did not limit the definition of covered transaction to FRTs, even though Title XI and its implementing regulations have applied historically only to appraisals for FRTs. The AMC Rule, through the interagency process, determined that defining "covered transaction" as such reflected the statutory text of section 1121(11), which defines the term "appraisal management company," as in pertinent part, "any external third party authorized either by a creditor or a consumer credit

¹⁵ See 12 CFR 34.211(h); 12 CFR 225.191(h); 12 CFR 323.9(h); 12 CFR 1222.21(h) (2015).

transaction secured by the consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets.”¹⁶ It was further stated in the AMC Rule preamble that applying coverage of the AMC Rule beyond FRTs was consistent with the structure and text of other parts of Title XI, section 1124, most of which address appraisals generally rather than appraisals only for FRTs, and in particular, the text of section 1124(a)(4) of Title XI indicates that one of the chief purposes of the minimum requirements for AMCs is to ensure compliance with the valuation independence standards established pursuant to section 129E of the Truth and Lending Act (TILA) (15 U.S.C. 1639e).¹⁷ The preamble of the AMC Rule concluded that those standards apply to AMCs whenever they engage in a consumer credit transaction secured by the consumer's principal dwelling, regardless of whether the transaction is a FRT.¹⁸

Another commenter questioned the benefit of the AMC Registry to the industry as a whole. The ASC notes the requirement for the ASC to maintain the AMC Registry is statutory. The benefit of the Registry initially will be to promote information sharing between States on AMCs. The Registry will also allow lenders, AMCs and other stakeholders to identify AMCs that are located in participating States, and therefore subject to State registration and supervision. In addition, the Registry will identify AMCs that are Federally regulated AMCs.

Collection and transmission of annual AMC registry fees.

The ASC is adopting § 1102.403(a) and (b) substantially as proposed regarding collection and transmission of annual AMC registry fees. On or before the effective date of this rule, the ASC will issue an ASC Bulletin to States that will address:

1. When the AMC Registry will be open for States; and

¹⁶ See 80 FR 32658, 32664 (June 9, 2015).

¹⁷ See Title XI sec. 1124(a)(4), 12 U.S.C 3353(a)(4).

¹⁸ See 80 FR 32658, 32664 (June 9, 2015).

2. Reporting requirements (information required to be submitted by States in order to register AMCs on the AMC Registry) with the effective date for compliance.

Section 1102.403(a) and (b) implement collection and transmission of annual AMC registry fees for States that elect to register and supervise AMCs following the statutory scheme set forth in sections 1109 and 1117 of Title XI as amended by the Dodd-Frank Act. The final rule requires AMC registry fees to be collected and transmitted to the ASC on an annual basis by States that elect to register and supervise AMCs. Only those AMCs whose registry fees have been transmitted to the ASC are eligible to be on the AMC Registry.

The ASC requested comment on all aspects of proposed collection and transmission of annual AMC registry fees. (*See Question 4 in the proposal.*) One commenter stated that while it is understandable that States should have some flexibility in connection with the collection of registry fees, some boundaries or guidelines should be implemented within the final rule because varying State expiration dates could be financially and logically challenging for AMCs. One commenter stated that the staggered renewal dates could complicate the reporting process and may be a burden to AMCs and States to maintain records. The commenter suggested the reporting period should be the same for every State. As proposed, the ASC recognizes that States should have the flexibility to align a one-year period with any 12-month period, which may or may not be based on the calendar year. Based on annual fees paid by the States historically for appraiser registry fees, the ASC recognizes States require flexibility to determine the period for reporting and collection of registry fees dependent on their budget cycles, rules and statutes. States vary greatly on the 12-month cycle as well as renewal cycles, which in some States may be 2 years or more. Just as many States do not use a calendar year for their existing appraiser credentialing process, the ASC believes that allowing States to set the 12-month period

provides appropriate flexibility and will help States comply with the collection and transmission of AMC fees and reduce regulatory burden for State governments. States may choose to do this in a similar manner as they currently do for their appraisers, meaning some States have a date certain every year, while other States use, for example, the appraiser's date of birth (States could use AMC registration date similarly). The registration cycle is left to the individual States to determine, but the ASC notes that the statutory requirement in section 1109(a)(4) requires States to submit AMC registry fees to the ASC annually.¹⁹

Several other commenters expressed concern over the additional burden on States to collect and transmit information and fees to the ASC and the need for additional funding and staff. Another commenter stated the ASC should consider implementing a centralized computer system for collecting AMC registry fees, and use some of the fees to provide grants to States to set up and run their AMC programs. The ASC will continue to work with States to address increased burden and will continue to explore means to provide additional grant funding to the States to support State programs as funds are available and additional grant policies and procedures are developed and approved.

One commenter objected to States levying additional fees on AMCs to cover the costs of collecting and transmitting fees to the ASC. This commenter referenced the AMC Rule stating in its preamble the option for States to collect administrative fees from Federally regulated AMCs to offset the cost of collecting the AMC Registry fee and the information related to the fee. The ASC understands the basis for the concern, but recognizes this is a matter left to the States.

¹⁹ See Title XI sec. 1109(a)(4)(B), 12 U.S.C. 3338(a)(4)(B).

The ASC requested comment on Federally regulated AMCs operating in a State that does not elect to register and supervise AMCs, and whether the ASC should collect information and fees directly from those Federally regulated AMCs. (*See Question 5 in the proposal.*) The ASC received a number of comments in response to this question. One commenter expressed concerns about collecting fees from Federally regulated AMCs which are exempt from registration with the State. Another commenter stated that Federally regulated AMCs operating in a State that does not have an AMC program should report and submit fees directly to the ASC. A few commenters stated that the State would not have authority to collect fees from entities that are exempt from State licensure and they do not have authority to require that those entities submit data to the State Board and requested that the ASC collect the fees from those entities directly. Several commenters stated the ASC should collect fees directly from Federally regulated AMCs rather than the State acting as a pass-through. One commenter stated if the ASC sets up a program to collect fees from Federally regulated AMCs in States that do not register and supervise AMCs, the ASC should consider the same for States with an AMC program. Another commenter stated that States could choose to opt out due to the reported low percentage of FRTs compared to overall transactions, which would result in a barrier to collection of fees in those States. The ASC considered commenters' concerns, but recognizes the authority to impose requirements on Federally regulated AMCs lies with the Agencies.²⁰ The ASC will work with the Agencies to address these concerns.

Some commenters expressed concern that even though they elect to register and supervise AMCs, they would have no authority over Federally regulated AMCs, and therefore no ability to accept information or fees from those AMCs. The ASC recognizes this may present a challenge

²⁰ OCC, Board, FDIC, NCUA, Bureau, and FHFA (*see footnote 8*).

for some States. However, for States that elect to register and supervise AMCs, the requirement to collect fees from Federally regulated AMCs is statutory. The Agencies²¹ involved with issuing the AMC Rule recognized that practical challenges may arise as the minimum requirements are adopted in States and reporting requirements take effect and the Agencies committed to monitor these issues. The ASC will monitor these issues as well and will continue to explore means to provide additional grant funding to the States to support State programs as funds are available and additional grant policies and procedures are developed and approved.

The ASC requested comment on what barriers, if any, exist that would make it difficult for a State to implement the collection and transmission of AMC registry fees (*see Question 6 in the proposal*) and what costs, both direct in terms of fees and indirect in terms of administrative costs, would be associated with collection and transmission of AMC registry fees (*see Question 7 in the proposal*). One commenter estimated that the burden for a State's program would be 25 hours per month of staff time to complete and would cost approximately \$6000 to design a database and \$700/month for staff to maintain. Another commenter stated the proposed rule could negatively affect AMCs, consumers and real estate appraisers, as well as create burden for States. This commenter also stated AMCs will likely pass on fees to clients and therefore consumers. Another commenter stated costs may negatively affect smaller AMCs causing consolidation of AMCs. Another concern was that AMCs may pare down appraiser panels. The ASC recognizes the collection and transmission to the ASC of AMC registry fees by the States would create some recordkeeping, reporting and compliance requirements. However, these collection and transmission requirements are imposed by the statute. The ASC will continue to work with States to address increased burden and will continue to explore means to

²¹ *Id.*

provide additional grant funding to the States to support State programs as funds are available and additional grant policies and procedures are developed and approved.

Several commenters requested that States should be allowed to send in multi-year registry fees rather than annually. Another commenter expressed concern that States could incur significant administrative costs to implement programming changes to their computer systems if they have to collect fees annually rather than multi-year fees as they do now for appraisers. If a State can assess on a multi-year basis, the ASC would not object. However, the ASC notes that the statutory requirement in section 1109(a)(4) requires States that elect to register and supervise AMCs to submit AMC registry fees to the ASC annually.²² For clarification purposes, language that was included at the end of proposed section 1102.403(b) referencing the “12-month period subsequent to payment of the fee” has been removed to avoid conflict should a State assess the fee on a multi-year basis.

Another commenter expressed the desire for the ASC to continue to accept data files for AMCs. Historically, the ASC accepted data files, and continues to do so on a limited basis for the Appraiser Registry. However, this method of transmitting rosters is obsolete and time consuming. The ASC has continued to improve the Appraiser Registry using more up-to-date transmission methods such as the extranet application and Simple Object Access Protocol (SOAP) in order to provide more real-time information on the National Registries. While the ASC recognizes this may impose additional burden on States, the ASC will continue to explore means to provide grant funding to the States to support State programs as funds are available and additional grant policies and procedures are developed and approved.

²² See Title XI sec. 1109(a)(4)(B), 12 U.S.C. 3338(a)(4)(B).

Another commenter was concerned with specific collection and transmission scenarios and how various scenarios would impact determination of fees, calculation of panel size, transmission of fees, verification of fee calculation and audit requirements. Several of this commenter's concerns deal with logistics and will be part of the ASC Bulletin concerning reporting requirements which will be issued after this final rule. This commenter also wanted to know what timeline the ASC is considering between verification and remittance, similar to another commenter who stated there should be flexibility with the timing of payment of fees and the actual transmission of the fees, and that the final rule should add additional language that clearly addresses these potential gaps in order to avoid any unintended consequences. This is a matter that will be left to the States to administer within the following parameters: (1) AMC registry fees must be collected and transmitted to the ASC on an annual basis by States that elect to register and supervise AMCs; and (2) only those AMCs whose registry fees have been transmitted to the ASC are eligible to be on the AMC Registry.

IV. Regulatory Analysis

Paperwork Reduction Act

Certain provisions of the final rule contain “information collection” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Under the PRA, the ASC may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this final rule were submitted to OMB for review and approval at the proposed rule stage by the ASC pursuant to section 3506 of the PRA and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). OMB instructed the ASC to

examine public comment in response to the proposed rule and describe in the supporting statement of their next collections any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendation. The ASC received 12 public comments regarding the collection and concern of burden on States, and two comments voiced concern that the ASC did not perform a cost benefit analysis. The ASC described the comments in the supporting statement above and the discussion below on the Regulatory Flexibility Act, and addressed why the ASC did not incorporate commenters' recommendations. The collection of information requirements in the final rule are found in §§ 1102.400-1102.403. This information is required to implement section 1473 of the Dodd-Frank Act.

Title of Information Collection: Collection and Transmission of Annual AMC Registry Fees.

OMB Control Nos.: The ASC will be seeking new control numbers for these collections.

Frequency of Response: Event generated.

Affected Public: States; businesses or other for-profit and not-for-profit organizations.

Abstract

State Recordkeeping Requirements

States that elect to register and supervise AMCs are required to collect and transmit annual AMC registry fees to the ASC. Section 1102.402 establishes the annual AMC registry fee for States that elect to register and supervise AMCs as follows: (1) in the case of an AMC that has been in existence for more than a year, \$25 multiplied by the number of appraisers who have performed an appraisal for the AMC on a covered transaction in such State during the previous year; and (2) in the case of an AMC that has not been in existence for more than a year, \$25 multiplied by the number of appraisers who have performed an appraisal for the AMC on a covered transaction in such State since the AMC commenced doing business.

Section 1102.403 requires AMC registry fees to be collected and transmitted to the ASC on an annual basis by States that elect to register and supervise AMCs. Only those AMCs whose registry fees have been transmitted to the ASC will be eligible to be on the AMC Registry. Section 1102.403 clarifies that States may align a one-year period with any 12-month period, which may, or may not, be based on the calendar year. The registration cycle is left to the individual States to determine.

State Reporting Burden

Section 1103 of Title XI, *Functions of Appraisal Subcommittee*, was amended by the Dodd-Frank Act to require the ASC to maintain a registry of AMCs that are either: (1) registered with and subject to supervision by a State; or (2) Federally regulated AMCs. On or before the effective date of this rule, the ASC will issue an ASC Bulletin to States that will address:

1. When the AMC Registry will be open for States; and
2. Reporting requirements (information required to be submitted by States in order to register AMCs on the AMC Registry) with the effective date for compliance.

Burden Estimates:

Total Number of Respondents: 500 AMCs, 55 States.

Burden Total: 500 hours.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the proposed rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the proposed rule will not have a significant economic impact on a

substantial number of small entities and publishes its certification and a brief explanatory statement in the *Federal Register* together with the rule. Based on its analysis, and for the reasons stated below, the ASC believes that the rule will not have a significant economic impact on a substantial number of small entities.

Section 1109 of Title XI provides that State appraiser certifying and licensing agencies that elect to register and supervise AMCs shall collect (1) from AMCs that have been in existence for more than a year, annual AMC registry fees in the amount of \$25 (up to a maximum of \$50) multiplied by the number of appraisers “working for or contracting with” an AMC in a State during the previous year; and (2) from AMCs that have not been in existence for more than a year, annual AMC registry fees in the amount of \$25 (up to a maximum of \$50) multiplied by an appropriate number to be determined by the ASC.²³ The purpose of the statutory fee is to support the ASC’s functions under Title XI. Because the ASC believes the minimum fee required by the statute would be adequate to support its functions, the rule adopts the minimum fee of \$25 as set by statute. The rule also interprets the phrase “working for or contracting with” to mean those appraisers that performed an appraisal for the AMC on a covered transaction during the reporting period. For AMCs that have existed for more than a year, the formula is \$25 multiplied by the number of appraisers who have performed an appraisal for the AMC on a covered transaction during the previous year. For AMCs that have not existed for more than a year, the \$25 fee is multiplied by the number of appraisers that performed an appraisal for the AMC on a covered transaction since the AMC commenced doing business.

Regarding the fee for AMCs that have been in existence for more than a year, the ASC believes the rule imposes the minimum fee allowed under the statutory provisions of section

²³ See 12 U.S.C. 3338(a)(4)(B).

1109. The ASC did not exercise statutory discretion granted to the ASC to increase the fee above \$25. Further, the ASC interprets “working for or contracting with” to mean only those appraisers who actually performed an appraisal for the AMC, as opposed to all appraisers on the AMC’s panel or all appraisers engaged, regardless of whether the assignment was completed. The ASC believes this formula results in the lowest fee allowed by the statute and the ASC chose not to exercise its authority to increase this minimum fee. Therefore, any burden produced is the result of statutory and not regulatory requirements.

The ASC has also decided to adopt the statutory minimum fee of \$25 for AMCs that have not existed for more than a year. As required by statute, the ASC adopted an appropriate number against which to multiply the \$25 fee. The ASC adopted the same multiple as used for AMCs that have existed for more than a year (*i.e.*, the number of appraisers that have performed appraisal assignments for the AMC). It is possible that the ASC may have been able to adopt a multiple that would have resulted in a lower fee and would still be deemed appropriate. In this regard, the rule may have created a burden for AMCs that have not existed for more than a year, beyond the burden created by the statutory requirements alone. However, using the actual period of time since the AMC commenced doing business will maintain some consistency in the calculation of AMC registry fees to reduce administrative burden for the States.

One commenter stated the proposed rule would have a large financial impact on smaller AMCs and community banks and credit unions, as well as appraisers, and asserted that the RFA requires analysis when the rule directly regulates small entities. This commenter stated that as an owner of a small AMC, regulatory fees proposed are burdensome, and as a national AMC, is opposed to paying for the same appraiser in different States, especially given that the AMC registry fee is on top of other State fees required by the States, and regulatory oversight seems

“duplicitous.” Another commenter stated the proposed rule would affect thousands of small appraisal businesses as a result of AMCs passing the registry fee on to appraisers, and that the ASC should do extensive analysis on how the proposed rule will affect residential appraisers. The ASC shares in the concern but has no authority to regulate that issue. A few commenters indicated that some States are looking at regulating this issue at the State level. In support of those States, the ASC notes the fee imposed by statute is not a fee assessed on appraisers, but rather on AMCs. This commenter, similar to the previous commenter, also did not believe the requirements of section 609(a) of the RFA have been met and that the fee may force small AMCs out of business, as well as impact sole proprietorships that accept assignments from AMCs. This commenter went on to state that while the ASC is not required to adhere to Executive Order 12866 or issue cost benefit analysis, this commenter believes it is sound best practice.

The ASC carefully considered these matters and concluded requirements under the rule are imposed by the statute, not the rule, and further, the requirements apply to those States that elect to register and supervise AMCs following the statutory scheme set forth in section 1473 of the Dodd-Frank Act. In addition, the RFA does not require an agency to conduct a small-entity impact analysis when the agency does not regulate the affected entities (AMCs, lenders, appraisers). The ASC’s statutory oversight extends to State certifying and licensing agencies. Section 1109 of Title XI provides the framework and minimum fee to collect from AMCs for States that elect to register and supervise AMCs. The ASC believes the rule as proposed imposes the minimum fee of \$25 allowed under the statutory provisions of section 1109. The statute did provide latitude for the ASC to establish an appropriate number to multiply by \$25 for AMCs that have not been in existence for a year. Using the actual period of time since the AMC

commenced doing business will maintain some consistency in the calculation of AMC registry fees to reduce administrative burden for the States. The ASC did not exercise statutory discretion granted to the ASC to increase the fee above \$25. Therefore, any burden produced is the result of statutory and not regulatory requirements.

While some burden beyond the statutory requirements may have resulted from the rule for AMCs that have not existed for more than a year, the ASC does not believe the rule will have a significant economic impact on a substantial number of small entities. There are only approximately 500 AMCs operating in the United States. The annual regulatory burden will only apply to new AMCs that have not existed for more than a year. Given the small number of AMCs currently in operation, it is unlikely that there will be a substantial number of AMCs that commence doing business in any given year. Further, the ASC adopted the lowest possible fee of \$25. Therefore, the ASC does not believe that the exercise of its discretion in setting the fee formula for such AMCs will have a significant economic impact on a substantial number of small entities.

The collection and transmission to the ASC of AMC registry fees by the States would create some recordkeeping, reporting and compliance requirements. However, these collection and transmission requirements are imposed by the statute, not the rule. Further, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts when the agency's rule directly regulates the small entities.²⁴

²⁴ For purposes of assessing the impacts of the proposed rule on small entities, “small entities” is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. *See* 5 U.S.C. 601(6). A “small business” is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. *See* 5 U.S.C. 601(3). A “small organization” is any “not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” 5 U.S.C. 601(4). A “small governmental jurisdiction” is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. *See* 5 U.S.C. 601(5). Given these

Based on its analysis, and for the reasons stated above, the ASC believes that the rule will not have a significant economic impact on a substantial number of small entities. Therefore, the ASC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995 Determination

The ASC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the ASC considered whether the final rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation). For the following reasons, the ASC finds that the final rule does not trigger the \$100 million UMRA threshold. The costs specifically related to requirements set forth in statute are excluded from expenditures under the UMRA. Given that the final rule reflects requirements that arise from section 1473 of the Dodd-Frank Act, the UMRA cost estimate for the proposed rule is zero. For this reason, and for the other reasons cited above, the ASC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, this proposed rule is not subject to section 202 of the UMRA.

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisers, Banks, Banking, Freedom of information, Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the ASC amends 12 CFR part 1102 as follows:

definitions, States that elect to establish licensing and certification authorities are not small entities and the burden on them is not relevant to this analysis.

PART 1102—APPRAISER REGULATION

1. The authority citation for part 1102 is revised to read as follows:

Authority: 12 U.S.C. 3348(a), 3332, 3335, 3338 (a)(4)(B), 3348(c), 5 U.S.C. 552a, 553(e);

Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p. 235).

2. Subpart E to part 1102 is added to read as follows:

Subpart E – Collection and Transmission of Appraisal Management Company (AMC)

Registry Fees

Sec.

1102.400 Authority, purpose, and scope.

1102.401 Definitions.

1102.402 Establishing the annual AMC registry fee.

1102.403 Collection and transmission of annual AMC registry fees.

Subpart E – Collection and Transmission of Appraisal Management Company (AMC)

Registry Fees

§ 1102.400 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Appraisal Subcommittee (ASC) under sections 1106 and 1109 (a)(4)(B) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111-203, 124 Stat. 1376 (2010)), 12 U.S.C. 3335, 3338 (a)(4)(B)).

(b) *Purpose.* The purpose of this subpart is to implement section 1109 (a)(4)(B) of Title XI, 12 U.S.C. 3338.

(c) *Scope.* This subpart applies to States that elect to register and supervise appraisal management companies pursuant to 12 U.S.C. 3346 and 3353, and the regulations promulgated thereunder.

§ 1102.401 Definitions.

For purposes of this subpart:

(a) *AMC Registry* means the national registry maintained by the ASC of those AMCs that meet the Federal definition of AMC, as defined in 12 U.S.C. 3350(11), are registered by a State or are Federally regulated, and have paid the annual AMC registry fee.

(b) *AMC Rule* means the interagency final rule on minimum requirements for AMCs.

(12 CFR 34.210 – 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26).

(c) *ASC* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council established under section 1102 (12 U.S.C. 3310) as it amended the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 *et seq.*) by adding section 1011.

(d) *Performed an appraisal* means the appraisal service requested of an appraiser by the AMC was provided to the AMC.

(e) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the United States Virgin Islands, and American Samoa.

(f) *Other terms.* Definitions of: *appraisal management company (AMC); appraisal management services; appraisal panel; consumer credit; covered transaction; dwelling; Federally regulated AMC* are incorporated from the AMC Rule by reference.

§ 1102.402 Establishing the annual AMC registry fee.

The annual AMC registry fee to be applied by States that elect to register and supervise AMCs is established as follows:

- (a) In the case of an AMC that has been in existence for more than a year, \$25 multiplied by the number of appraisers who have performed an appraisal for the AMC in connection with a covered transaction in such State during the previous year; and
- (b) In the case of an AMC that has not been in existence for more than a year, \$25 multiplied by the number of appraisers who have performed an appraisal for the AMC in connection with a covered transaction in such State since the AMC commenced doing business.

§ 1102.403 Collection and transmission of annual AMC registry fees.

- (a) *Collection of annual AMC registry fees.* States that elect to register and supervise AMCs pursuant to the AMC Rule shall collect an annual registry fee as established in § 1102.402 from AMCs eligible to be on the AMC Registry.
- (b) *Transmission of annual AMC registry fee.* States that elect to register and supervise AMCs pursuant to the AMC Rule shall transmit AMC registry fees as established in § 1102.402 to the ASC on an annual basis. States may align a one-year period with any 12-month period, which may, or may not, be based on the calendar year. Only those AMCs whose registry fees have been transmitted to the ASC will be eligible to be on the AMC Registry.

By the Appraisal Subcommittee,

Arthur Lindo
Chairman

Dated: September 13, 2017.

Billing Code 6700-01

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